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I

IN THE

Supreme Court of The United States

OF AMERICA

No. .....

ILLA ROUTH ALLEY SCHURINK
Petitioner

vs.

UNITED STATES OF AMERICA, and
GERTRUDE RHODES ALLEY and
BLUFORD ALLEY
Respondents

PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Mobile, Alabama

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For Respondents
Gertrude Rhodes Alley and
Bluford Alley

STATEMENT OF THE CASE

The application by Plaintiff (petitioner) seeks to review a decision in this case by the District Court of the Southern Division of the Southern District of the State of Alabama, affirmed on appeal, with an opinion by the Circuit Court of Appeals for the Fifth Circuit. The action arises under the National Service Life Insurance Act of 1940 as amended to August 9, 1945.

PLEADINGS

The petitioner, Illa Routh Alley Schurink filed suit against the United States of America on May 12, 1948, seeking the proceeds of two policies of Five Thousand ($5,000.00) dollars each, issued under the National Service Life Insurance Act of 1940 on the life of Joseph Bluford Alley, deceased. The United States answered and interpleaded Gertrude Rhodes Alley and Bluford Alley, the mother and father of the deceased. The parents answered claiming the proceeds of the insurance and with the United States of America, filed a motion to dismiss the complaint assigning among other grounds, the failure of the petitioner to allege that she was the widow of the insured. In the District Court and in the Circuit Court of Appeals, the petitioner has not objected to the procedure by which the question is raised but admitted in both courts the question was properly raised and is as here presented by petitioner, "must the plaintiff show herself to be the widow of the insured to recover on these policies?"

The District Court granted the motion and the petitioner declining to amend, the complaint was dismissed.

FACTS

The record has been abbreviated by stipulation of counsel (R. 2). As substantially set out by the petitioner, the plaintiff and the deceased insured were married to each other prior to his entry into the United States Navy. Two policies of insurance were issued under the National Service Life Insurance Act of 1940 with the petitioner as the designated beneficiary and the parents as contingent beneficiaries. There was no child born of this marriage and no change of beneficiary was ever made. In February, 1945, the petitioner began a proceeding against Joseph Bluford Alley for a divorce in the Equity Division of the Circuit Court of Mobile County, Alabama. On July 19, 1945, a decree was rendered by that Court dissolving and annulling the bonds of matrimony but containing a provision as required by the laws of Alabama that neither party should remarry, except to each other, within sixty days after the rendition of the decree.

The insured died on August 9, 1945, with the policies of insurance in full force and effect on the date of his death.

ERRORS URGED BY PETITIONER

The petitioner on appeal to the Circuit Court of Appeals, urged error by the District Court in deciding, (1) that the petitioner must allege and prove the status of widow at the time of the death of the insured to recover under these policies and, (2) that a divorce a vinculo in the Courts of Alabama terminates the relationship of marriage. The petitioner now urges error in the affirmance by the Circuit Court of Appeals.

BASIS FOR APPLICATION FOR THE WRIT OF CERTIORARI

These respondents take issue with the petitioner on the reasons assigned for making the application. These respondents deny that there is an important question of Federal law which should be settled and deny that "countless possible recipients of National Service Life Insurance" will be affected by this decision. These respondents most strenuously deny the claim that the decision of the Circuit Court of Appeals is in conflict with Alabama Supreme Court decisions and Alabama Statutes.

AUTHORITIES AND ARGUMENT

It has been the contention of the United States of America and these respondents, throughout this litigation, that the words, "the insurance shall be payable only to a widow, widower, child, * * * of the insured" mean exactly what they say in Subsection (g) of Section 802, Title 38 of United States Code Annotated. On two occasions the Congress of the United States has provided insurance to cover men in the Armed Services in time of war. In each of these instances the Congress has taken into consideration facts which this Court will judicially know. Many young, immature men were brought into the Armed Services. They were often so situated that the execution and mailing of forms or other formal procedure was difficult if not impossible. These young men became the prey of camp followers and designing people. The Congress determined that insurance could be collected only by those within a limited relationship. During World War I and during World War II the Acts of Congress rigidly required a legal status as a widow at the time of the death of the insured.

Both Acts were amended after the men returned to a civilian status. Both amendments permitted the form of insurance to be changed and permitted the designation of beneficiaries outside of the relationship originally named. The World War I Act was amended by the Act of March 4, 1925, 43 Stat. 1302. The World War II Act was amended by Section 4 of the Insurance Act of 1946 approved August 1, 1946, 60 Stat. 781.

When the Congress adopted the National Service Life Insurance Act of 1940, 54 Stat. 1008, they had before them the history and interpretation of the provisions of the War Risk Insurance Act of World War I. They used the plain and exact language, "the insurance shall be payable only to a widow." The words, "payable" and "widow" do not refer to the status at the time the beneficiary is designated. These words refer to the date when the proceeds of the insurance policies shall be due someone. On the date of death the insurance is payable and on the date of death the insured could have a widow but not before.

Petitioner claims this interpretation "does violence to the whole scheme of National Service Life Insurance" (Brief page 6), but these respondents assert that it would torture this language to twist the meaning of this provision to relate to a status at the time of the issuance of the policies.

In sub-section (i) of this Act the Congress positively declares that no person shall have a vested right in this insurance and the consent of the beneficiary is not required for a change by the insured.

No court has construed this provision but the cases cited

by petitioner have considered related questions, as have the following cases:

Rittgers vs. United States 154 Fed. (2nd.) page 768;
Wood vs. United States 74 Fed. Supp. 732;
Horsman vs. United States 68 Fed. Supp. 522;
Brown vs. United States 72 Fed. Supp. 153;
Branch vs. United States 83 Fed. Supp. 641;
United States vs. Layton 68 Fed. Supp. 247.

The petitioner supports the proposition that a divorce decree in Alabama is actually interlocutory for a period of sixty days by citing decisions in criminal cases where one or both parties remarried within sixty days. True, a divorce decree may be amended or set aside by the Court within thirty days, just as any other decree in Equity may be so treated, Rule 65, Title 7, Code of Alabama of 1940. The decree could have been annulled or vacated just as any other decree could be. Hooke vs. Hooke 247 Ala. 450 25 So. (2nd) page 33.

The petitioner did none of these and the decree is not subject to collateral attack.

The cases cited to support the theory that the decree is interlocutory are: Vance vs. Vance 210 Ala. 9, 97 So. 230; Brand vs. State 242 Ala. 15, 6 So. (2nd) 446.

Petitioner does not cite Barfield vs. Barfield 139 Ala. 290, 35 So. 884; Boyles vs Wallace 208 Ala. 213, 93 So. 908 and Smith vs. Goldsmith 223 Ala. 155, 134 So. 651. These cases also dealt with the prohibition against marriage. Neither does the petitioner mention that in the Brand case there was no Final

Decree in existence at the time of trial, for that, the Court granting the decree had set it aside while still in the breast of the court. In the Vance case, as a part of the opinion, when the court set out the facts it said, "on December 2, 1922, he obtained a divorce from her by decree of the Circuit Court of Jefferson County, in Equity, which decree dissolved their former marriage. This was a court of competent jurisdiction to render such a decree." The court then held that the copy of this decree was properly excluded as evidence in the case for the decree did not justify the defendant in marrying the same day the decree was signed.

Other decisions of the Supreme Court of Alabama are completely ignored. In the case of Jones vs. Jones 31 So. (2nd) page 314, decided June 30, 1947, that court said, "it has long since been determined here that a decree of divorce a vinculo puts an end to the relationship of marriage as effectually as would result from the death of either party, and as a consequence, all duties and obligations necessarily dependent upon the continuance of that relationship immediately cease."

Other decisions of the highest court in Alabama enunciating this same principal are:

Alabama Pension Commission, et als, vs. Morris 242 Ala. 110, 4 So. (2nd) 896;

Torme vs. Torme 251 Ala. 521, 38 So. (2nd) 497.

The National Service Life Insurance Act was amended August, 1946, and claims arising prior to that time must have been acted upon before this time. No authority is cited to support the statement that countless possible recipients of such insurance are affected by this decision. There is nothing to indi-

cate that the District Courts have their dockets crowded with claims involving this question. Certainly, the fact that this is the first Circuit Court of Appeals decision involving this question would indicate that the number of claims depending on a decision of this question are small indeed.

The respondents, parents of the deceased serviceman, respectfully submit that the petition should be denied.

Respectfully,

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For Respondents

Gertrude Rhodes Alley and
Bluford Alley

March 10, 1950.

APPENDIX

RULE 65

No questioning of decree after thirty days. Unless the jurisdiction of the court is invoked by a bill of review or by a bill in the nature of a bill of review, the court cannot alter a final decree other than by correcting clerical errors therein, after the lapse of thirty days from the date of its rendition, except where an application for rehearing has been duly filed and has not been ruled upon.